

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 881 of 1996

in

SPECIAL CIVIL APPLICATION No 2285 of 1996

For Approval and Signature

The Honourable the Chief Justice G.D. Kamat

The Honourable Mr.Justice C.K. Thakkar

1. Whether Reporters of Local Papers may be allowed to see the judgment? - Yes.
2. To be referred to the Reporter or not? - Yes.
3. Whether their Lordships wish to see the fair copy of judgment? - No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? - No.
5. Whether it is to be circulated to the Civil Judge? - No.

SARDAR PATEL UNIVERSITY

Versus

PATEL JITENDRAKUMAR DAHYABHAI

Appearance:

Mr.S.N. Shelat, Additional Advocate General,
with MR NV ANJARIA for the appellant.
Mr.Dhaval C. Dave, Advocate, for respondent No.1.

CORAM : THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

Date of Order: 29/10/96

ORAL JUDGEMENT (Per G.D. Kamat, C.J.)

This Letters Patent Appeal is instituted by the appellant, Sardar Patel University, through its Registrar, challenging the order of the learned single Judge made in Special Civil Application No.2285 of 1996, which was instituted by respondent No.1 and in which respondent No.1 succeeded.

Shortly stated the facts are that respondent No.1 completed his Graduation in Science in the year 1992. When he appeared for the First Year M.Sc. examination in April-May, 1994, he was found to have indulged in unfair means. The result was, he was proceeded in an enquiry and by Resolution No.18, made by the Syndicate of the University, the result of the respondent No.1 was cancelled and in addition, he was debarred from securing admission in any discipline upto October-November, 1995 and further held out that he could appear for the M.Sc. examination only in April-May, 1996.

Respondent No.1, going by the contents of the Resolution No.18, believed that he can take some other course and appear for examination for the academic year 1995-'96 on the basis that he was debarred from securing admission in any discipline only upto to October-November, 1995. Based upon his reading of the Resolution, respondent No.1 took admission for B.Ed. Course for the academic year 1995-'96. However, with a view not to land himself in trouble, respondent No.1 approached the authorities of the University to find out whether he was able to prosecute the course for B.Ed. for the academic year 1995-'96. Upon his application, it is common ground that on behalf of the Vice Chancellor, on 16th December, 1994, a communication was addressed to the respondent No.1, clearly stating that respondent No.1 can appear in accordance with the Rules for the M.Sc. examination in April 1996 as an external student and he may also fill the form for B.Ed., if he so chooses. It appears that respondent No.1 had made a specific enquiry whether he could prosecute the course for B.Ed. for the year under consideration, viz., 1995-'96. However, subsequently, respondent No.1, by a communication dated 22nd March, 1996, was informed that the admission given to respondent No.1 for B.Ed. course for the academic year 1995-'96 stands cancelled with the result respondent No.1 could not have appeared for final B.Ed. examination, which was to be held in April, 1996. Respondent No.1 challenged this communication before this

Court in Special Civil Application No. 2285 of 1996. An interim order was sought, under which the operation of the communication dated 22nd March, 1996 was stayed. Though respondent No.1 was allowed to appear for the B.Ed. examination under the Court order, the result of the respondent No.1 at the performance in the examination was withheld. However, respondent No.1, again, moved the learned single Judge and obtained an order, by which the appellant University were made to declare the result of the respondent No.1, by putting a rider that it shall be subject to the final decision of Special Civil Application No.2285 of 1996, pending before the learned single Judge. From the certificate issued by the Appellant-University, it is clear that the respondent No.1 has passed the Degree examination of B.Ed. in flying colours in that he got 825 out of 1200 marks, i.e. in First Class. The Special Civil Application came to be allowed by the learned single Judge by the impugned order. The learned single Judge, while interpreting Resolution No.18, held that the respondent No.1 was barred from appearing for any examination of the University and / or taking admission to any course of studies restricted to October-November, 1995 only and could appear in M.Sc. examination in April, 1996. Therefore, there was no bar whatsoever for the respondent No.1 to have taken admission for B.Ed. course for the academic year 1995-'96. It is in that view of the matter, the learned single Judge held that the respondent No.1 could have taken admission for B.Ed. and nothing could be faulted with such action, with the result further direction was made to the appellant University to remove the rider that was made on the marksheet, and accordingly directed to amend the same.

This judgment of the learned single Judge dated 9th of July, 1996 is challenged presently in this Letters Patent Appeal by the Sardar Patel University on various grounds, including the major ground of the so-called erroneous interpretation of Resolution No.18 made by the Syndicate of the University.

The aforementioned Resolution is in Gujarati and the verbatim translation of the same is to this effect :-

"....

(5) The April-May 1994 examination result of the following students is cancelled and they are debarred from appearing in any examination of the University and taking admission to any course of

studies till October-November, 1995. They can appear in April, 1996 examination of the University.

Sr.No. Seat No. Name of the student and College.

M.Sc. (Previous)

86 280 Patel Jitendrakumar
Dahyabhai.

Department of
Mathematics-Post
Graduate.

.... "

Mr.Shelat, learned counsel appearing for the appellant-University, says that from what is extracted above, it is crystal-clear that the respondent No.1 could not have taken up any course or any examination or any admission not only in the year 1994-'95 but also for the year 1995-'96 for any course and it was open to the respondent No.1 to have appeared for the First Year M.Sc. examination in April, 1996. It was, therefore, suggested that the learned single Judge was in error in interpreting Resolution No.18 correctly and, therefore, interference is justified.

Upon going through the Resolution, it appears to us that the University clearly intended that in view of the malpractice committed by respondent No.1 in the First year M.Sc. examination in April-May, 1994, not only his result was cancelled, but respondent No.1 was also prohibited from taking admission or any examination and it was further clearly stipulated that he could take his M.Sc. examination only in April, 1996. Perhaps, the University did not contemplate that the respondent No.1 could have chosen some other course other than M.Sc. Though Mr.Dave, learned counsel for respondent No.1, indeed, urged before us that the University debarred respondent No.1 from appearing in any examination, it was restricted to his taking admission to any course of studies only till October-November, 1995 and, therefore, respondent No.1 could have prosecuted the course commencing for the academic year 1995-'96, for which

examination is to be held in March / April, 1996. We are unable to agree with him though the Resolution is not very happily worded. The reason is simple. Respondent No.1 was debarred not only from appearing in any examination of the University until March / April, 1996, but also from taking admission for any of its courses for 1995-'96. The other way of looking at it is that no admission could have been taken until October, 1995 and, therefore, respondent No.1 could not have appeared for B.Ed. in March / April, 1996 without completing two terms. Therefore, what is intended by the appellant-University was clear in that the bar operated for the academic year 1995-'96.

However, it is not necessary for us to go further into this Appeal as a statement has been made by the counsel appearing for the appellant-University that as a result of the communication made on behalf of the University on 16th December, 1994, respondent No.1 prosecuted the course leading to B.Ed. and what is more for the final examination of B.Ed. Respondent No.1 has shown his merit by obtaining First Class. It was, therefore, suggested on behalf of the University that it would not like to now disturb and unsettle the position that emerged in this case. We accept the statement made on behalf of the University and accordingly, do not wish to disturb the result of the respondent No.1. The declaration of the result of respondent No.1 in B.Ed. examination, as declared on 27th June, 1996, shall be without a rider and the appellant-University is directed to issue a fresh marksheet within two weeks from today. In so far as the interpretation of the Resolution is concerned, the impugned order to that extent shall stand modified and appeal accordingly to stand disposed of, with no order as to costs.

(apj)